Immunocept, LLC, et al v. Fulbright & Jaworski Doc. 127

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
JUL 18 2006
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ________
DEPUTY CLERK

IMMUNOCEPT, LLC, PATRICE ANNE LEE, AND JAMES REESE MATSON,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CAUSE NO. A050A334 SS
	§	
FULBRIGHT & JAWORSKI, LLP,	§	
	§	
Defendant.	§	

FULBRIGHT & JAWORSKI'S RESPONSE TO PLAINTIFFS' OBJECTIONS TO BILL OF COSTS

COMES NOW, Fulbright & Jaworski, LLP ("Fulbright"), and files this Response to Plaintiffs' Objections to Fulbright's Bill of Costs and in support thereof, would respectfully show the Court as follows:

A. Summary

On June 8, 2006, Fulbright filed its Bill of Costs, listing a total of $50,620.41 in recoverable costs. Plaintiffs filed their Objections, and have objected to $8,153.98 of costs. Plaintiffs have lodged no objections to $42,466.43 in costs listed by Fulbright.

Plaintiffs argue that certain listed costs include charges for extra copies for convenience of counsel and charges for Defendants' document database services. With respect the former, Plaintiffs have misconstrued many of the reproduction costs listed in the Bill of Costs. As discussed in the chart below, the reproduction costs relate to copies reasonably necessary for use at depositions and copies made in order to produce documents to Plaintiffs in response to Plaintiffs' subpoenas and document requests to Fulbright and its experts. To facilitate the numerous depositions in this case, counsel for Fulbright was required to prepare exhibits,

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including copies to use to question witnesses and mark as deposition exhibits and to provide copies to opposing counsel for their convenience. Costs of those copies are plainly recoverable, as they were not "extra copies" made for the convenience of Fulbright's counsel.

With respect to database services and duplicate copies, as detailed below, Fulbright revised its Bill of Costs to remove these costs.

B. Plaintiffs' objections to deposition exhibits and document production costs should be overruled

For the reasons provided in Fulbright's Bill of Costs and in the chart below, the following costs are recoverable, and Plaintiffs' objections to these costs should be overruled.

Item No.	Company	Date	Amount	Purpose
15	Lighthouse	10/13/05	$612.87	These documents relate to the deposition of former F&J patent attorney, Sarah Brashears. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel. Contrary to Plaintiffs' objection, the invoice says nothing about a deposition notebook.
19	Lighthouse	11/03/05	$627.85	These documents relate to the deposition of Plaintiff, James Matson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
20	Lighthouse	11/04/05	$228.79	These documents relate to the deposition of Plaintiff, James Matson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.

Item No.	Company	Date	Amount	Purpose
21	Lighthouse	11/10/05	$87.20	These documents relate to the deposition of Plaintiff, Patrice Lee. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
23	Lighthouse	11/29/06	$390.50	These documents relate to the depositions of third party witnesses of Johnson & Johnson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
25	Lighthouse	12/02/05	$109.77	These documents were printed in order to produce documents to Plaintiffs in response to Plaintiffs' subpoena to Fulbright's expert, John Kirk. Plaintiffs' assertion in their Response that these copies were made "for an expert witness" is not correct-- the copies were made for Plaintiffs in response to Plaintiffs' subpoena, and not for the convenience of Fulbright counsel.
26	Lighthouse	12/02/05	$48.65	These documents relate to the depositions of third party witnesses of Johnson & Johnson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
27	Lighthouse	12/02/05	$250.06	These documents relate to the depositions of third party witnesses of Johnson & Johnson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.

Item No.	Company	Date	Amount	Purpose
29	Lighthouse	12/16/05	$107.75	These documents relate to the deposition of Plaintiffs' corporate representative, David Radunsky. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
30	Lighthouse	12/19/06	$165.03	These documents relate to the deposition of Plaintiffs' corporate representative, David Radunsky. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
33	Lighthouse	01/10/06	$24.25	These documents relate to the deposition of Plaintiffs' attorney, Thomas Felger. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
34	Lighthouse	01/11/06	$35.31	These documents relate to the deposition of Plaintiffs' attorney, Thomas Felger. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
35	Lighthouse	01/11/06	$95.93	These documents relate to the deposition of Plaintiffs' attorney, Thomas Felger. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.

Item No.	Company	Date	Amount	Purpose
37	Lighthouse	01/23/06	$556.78	These documents relate to the deposition of Plaintiffs' expert, James Malackowski. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
38	Lighthouse	01/23/06	$299.58	These documents relate to the deposition of Plaintiffs' expert, Alan MacPherson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
39	Lighthouse	01/25/06	$36.07	These documents relate to the deposition of Plaintiffs' expert, Alan MacPherson. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
42	Lighthouse	02/16/06	$106.00	These documents relate to the deposition of Plaintiffs' expert, Rinaldo Bellomo. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
43	Lighthouse	02/22/06	$33.95	These documents relate to the deposition of Plaintiffs' expert, Rinaldo Bellomo. At the time the documents were printed, these copies were made for the purpose of the deposition, including for use as deposition exhibits and to provide copies to opposing counsel, and not for the convenience of Fulbright counsel.
44	Lighthouse	02/26/06	$3,716.14	These documents were printed in order to produce documents to Plaintiffs in response to Plaintiffs' subpoena to Fulbright's expert, John Kellum.

Item No.	Company	Date	Amount	Purpose
46	Lighthouse	03/01/06	$35.00	These documents were printed in order to produce documents to Plaintiffs in response to Plaintiffs' subpoena to Fulbright's expert, John Kellum.
49	Lighthouse	03/03/06	$10.00	These documents were printed in order to produce documents to Plaintiffs in response to Plaintiffs' document request to Fulbright, which requested Fulbright's marketing materials. Pursuant to the requirements of the Federal Rules of Civil procedure, the Fulbright marketing materials were required to be produced exactly as they exist in their original form, which included tabs. Because the copies to Plaintiffs also included tabs, the cost of reproducing the materials—including the tabs—is recoverable.

C. Fulbright has Reduced the Bill of Costs to remove database costs and extra copies

Defendant has reviewed its Bill of Costs and has made the following reductions in order to remove costs relating to the document database and costs of duplicate copies:

Item No.	Company	Date	Initial Amount	Cost Reduction + tax	Revised Amount
14	Lighthouse	10/13/05	$45.47	**$45.47**	**$0.00**
16	Lighthouse	10/20/05	$147.13	$84.40 + $6.96= **$91.36**	**$55.77**
17	Lighthouse	10/20/05	$167.31	103.04 + 8.50 = **$111.54**	**$55.77**
18	Lighthouse	10/27/05	$137.26	69.84 + 5.76 = **$75.60**	**$61.65**
47	Lighthouse	03/02/06	$79.33	**$79.33**	**$0.00**
	TOTAL		**$576.55**	**$403.30**	**$173.19**

As a result of these adjustments, Defendants have reduced their Bill of Costs by the total amount of $403.30, and the amended Bill of Costs is **$50,217.11**.

Respectfully submitted,

BECK, REDDEN & SECREST
A Registered Limited Liability Partnership

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ATTORNEYS FOR DEFENDANT FULBRIGHT & JAWORSKI, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on counsel of record on July 17, 2006.

Via Certified Mail, Return-Receipt Certified
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